



Submission to ACCC

Fixed Line Telecommunications Services
Declaration Inquiry

August 2018



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October 2018

Introduction

Commpete – Alliance for Competition in Digital Communications (**Commpete**) welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission (**ACCC**) in response to the *ACCC Public inquiry into the declaration of the Fixed Line Access Services – August 2018*.

Commpete represents non-dominant telecommunication providers of retailer and wholesaler digital communications.

Commpete members provide fixed and mobile voice and data services to a full breadth of customer segments – residential, SME, corporate, government and wholesale customers. It acquires access services from a range of wholesale suppliers and certain members have in fixed line carrier interconnects arrangements with all the major providers.

Commpete members also have in place direct or indirect agreements with NBN to use NBN access services where possible to connect to customers. However, Commpete is still heavily reliant on alternative wholesale services to access customers outside the NBN footprint. It is therefore of the view that a robust, efficient wholesale remains crucial.

Future of Declarations

Commpete supports the continuation of the declarations to June 30, 2024 as proposed by the ACCC. We do so for the following reasons.

Continued Relevance of Copper Network

Telstra, as the owner of the legacy copper network, has the ability and the incentive to discriminate against access seekers requiring access to its network. This market power pertains to each customer connected to the network.

The rollout of the NBN is reducing the relevance of the legacy copper network, as individual services are migrated, as expected in 2014. The ACCC also anticipated in 2014 the legacy access network would continue to be relevant through the period of the NBN rollout.

Experience since has proved this judgment correct. Subsequent events make clear the copper today is in fact more relevant than was anticipated.

Factors contributing to this include:

1 The pace of the rollout.

The rollout is now years behind the projections in 2014 and continuing to slip. NBN last month again revised down its expected number of activated premises in June 2019 by 1.4 million SIOs. NBN's projections for activations to uptick beyond 2019 must be treated with caution, given its history of missing targets.

2 The impact of the Multi-Technology Mix.

The MTM has resulted in the continued use of the copper network. This has had two impacts. Firstly, reports of poor user experience by those on FTTN, HFC and, to a lesser extent, FTTC has caused consumer resistance to migrating to the NBN until they have no choice. Secondly, the continued use of the copper means consumers no longer face an disconnect/reconnect event at time they must choose which RSP will supply NBN-supported retail services.

This means competitive choice on the legacy copper services becomes more important. Telstra has a strong incentive to minimise competitive migration, as discussed below.

The delays and continuing uncertainty about the fitness for purpose of the HFC component of the NBN, as well as strong consumer dissatisfaction with the NBN HFC service, means the legacy copper in those locations could remain as the only viable access technology for competitors for many years.

3 Uncertainty about the future of the USO.

The Government has begun a process to develop replacement for the USO scheme, but there is no clarity as to when it will conclude. In the interim, the obligation to provide a Standard Telephone Service continues to 2032. It is unclear what the implications this are with regard to the copper remaining in service.

4 Pricing uncertainty relating to NBN services.

NBN's pricing model has been the subject of continual review and change, and there is a widely shared view that it continues to be unsustainable. The access prices for regulated copper-based services continues to provide an important benchmark and competitive constraint on NBN pricing.

These factors combined mean the on-going relevance of the copper declaration is greater than expected in 2014, and is likely to continue into the foreseeable future.

The consultation and position paper also observes the continuation of the declaration is unlikely to have an impact on investment. Investment in alternative last mile access networks will be driven by judgements about the impact of NBN on the recovery of such investment. Investment to utilise ULLS/LSS services will be determined by the timing of the rollout of the NBN on a location by location basis.

The removal of the declaration will not increase investment in either last mile infrastructure or ULLS/LSS based services.

Removing the declaration could result access to the ULLS/LSS becoming less viable. Telstra continues to have a strong incentive to maximise its retail market share in fixed broadband markets ahead of the cutover of services to the NBN. This means it would have a strong incentive to leverage its existing market power to disadvantage competitors seeking access to unbundled copper services.

Finally, Commpete believes the uncertainty created by the stop-start NBN rollout and changes to its strategy, technology choices and pricing have meant the transition to the new network has already created more disruption and undermining confidence in the industry than need have been the case. The removal of declaration of the legacy copper-based services would add to this disruption and uncertainty, to the detriment of investment, competition and consumers.

Conclusion

Commpete strongly supports the extension of the declaration of all six fixed services that are the subject of this review.

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